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ACCESS TO PSYCHOLOGISTS AND OPTOMETRISTS UNDER FEDERAL HEALTH BENEFITS PROGRAM

JUNE 25, 1974.—Ordered to be printed

Mr. MCGEE, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 2619]

The Committee on Post Office and Civil Service, to which was referred the bill (S. 2619) to provide for access to all duly licensed psychologists and optometrists without prior referral in the Federal employee health benefits program, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of this legislation, as amended by the Committee, is to allow participants under the Federal employees' health benefits program to have direct access to licensed clinical psychologists or optometrists without the necessity of supervision or referral by another health practitioner.

COMMITTEE ACTION

Hearings on S. 2619 were conducted by the full Senate Committee on Post Office and Civil Service on May 31, 1974. Prior to that time, the problem addressed by S. 2619 was heard before the Subcommittee on Compensation and Employment Benefits of the Senate Committee on Post Office and Civil Service on November 23, 1971. Senator Burdick was Chairman. The Subcommittee was simply hearing the general problem of health insurance coverage and had no legislation before it.

S. 2619 and its amendments were approved unanimously by the full Committee in executive session on June 18, 1974.

STATEMENT

Under existing law, contracts between the Civil Service Commission and some health insurance carriers provide that participants under the Federal employee health benefits program must be referred to a psy-

chologist or an optometrist by a licensed medical physician if the employee is to receive payment or reimbursement for the services performed by a psychologist or optometrist.

S. 2619 amends the Federal employee health benefits provision (5 U.S.C. 8902(j)) to make it mandatory that when a contract provides for payment or reimbursement for services performed by a licensed or certified clinical psychologist or optometrist, the participants under that health benefits contract will have direct access to the clinical psychologist or optometrist without the necessity of supervision or referral by a physician.

The Civil Service Commission objects to the bill on the grounds that it would legislate provisions that previously have been left to contract negotiation. The Committee believes that the restrictions on participants' access to psychologists and optometrists does not stand the test of service to the employee and are, therefore, not justified. The Committee did not consider the legality of existing contracts between health insurance carriers and the Civil Service Commission with respect to such restrictions, and the bill, as recommended, does not affect contracts already in existence. However, we have found no valid reason why the existing law should not be amended to correct the inequities found in some carrier contracts which are hereafter renewed or new contracts entered into on or after the date of enactment of this Act.

Aetna Life and Casualty, one of the two government-wide insurance carriers, granted participants under its plan direct access to the services of clinical psychologists in 1971 and direct access to the services of optometrists in 1973. Furthermore, 14 states now have provisions in their insurance codes which allow optometrists to be providers of covered services. The Civil Service Commission's former director of the Bureau of Retirement, Insurance, and Occupational Health stated in testimony on November 23, 1971 before Senator Burdick's Subcommittee on Compensation and Employment Benefits that "the clinical psychologists can perform responsibly without direction and supervision of a physician."

Many of the plans under the Federal employees' health benefits program have maintained their requirements for physician supervision and referral in the belief that this procedure is necessary in order to maintain a high quality of health services. However, with respect to mental health services, the "referring physician" often has no expertise in mental health care. In this regard, Mr. William Ryan, senior vice president of the National Association of Blue Shield Plans, in testimony before the House Post Office and Civil Service Subcommittee on Retirement and Employee Benefits in July 1973, stated:

> Neither have we required that the attending physician be a psychiatrist. * * * However, the contract specifies physician direction and supervision, regardless of specialty, and in the interests of all the parties, we administer it accordingly.

At the present time 46 States and the District of Columbia license or certify psychologists to provide mental health services, and all States license or certify optometrists to provide certain eye care services. The States have established standards by which to judge the

Competency of psychologists and optometrists to provide health services and have identified the types of services each may provide.

In view of the above the Senate committee as did its House counterpart can find no justification for requiring supervision or referral by a physician in order for participants under the Federal employees' health benefits contract to be entitled to payment or reimbursement for the services performed by psychologists or optometrists. In this connection it is important to note that S. 2619 does not expand the benefits to which participants are entitled under the various health benefits plans but only identifies which particular health practitioners may provide the services without referral when a contract provides for such services.

Section Analysis

The first section of the bill amends section 8902 of title 5, United States Code, by adding a new subsection (j) at the end thereof. The new subsection provides that an employee, annuitant, or family member who is covered by a contract under the Federal employee health benefits provisions of title 5, United States Code, shall be free to select, and shall have direct access to, a clinical psychologist or optometrist, licensed or certified as such under applicable Federal or State law, without the necessity of supervision or referral by another health practitioner when the contract requires payment or reimbursement for services which may be performed by a clinical psychologist or optometrist. When services have been performed by a clinical psychologist or optometrist under the above-stated conditions, the employee, annuitant, or family member, as the case may be, shall be entitled to have payment or reimbursement made to him or on his behalf for such services.

It is important to note that the provisions of the new subsection (j) apply only with respect to contracts containing provisions which require payment or reimbursement for services which may be performed by a clinical psychologist or optometrist. The intent of this legislation merely is to eliminate the necessity of supervision or referral by another health practitioner in the case of services performed by a clinical psychologist or optometrist. However, if the contract does not provide benefits covering the services of clinical psychologists or optometrists, the provisions of the new subsection (j) will not apply. In other words it is not the intent of this legislation to require that all contracts under the Federal employees' health benefits program include benefits covering the services of clinical psychologists and optometrists.

The provisions of the new subsection (j) are not applicable to group practice prepayment plans.

Section 2 of the bill provides that the provisions of the new subsection (j) of section 8902 shall become effective with respect to any contract entered into or renewed on or after the date of enactment of the Act.

Amendments

The Committee struck out all after the enacting clause of S. 2619 and inserted in lieu thereof the following:

That section 8902 of title 5, United States Code, is amended by adding at the end thereof the following:

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"(j) When a contract under this subchapter requires payment or reimbursement for services which may be performed by a clinical psychologist or optometrist, licensed or certified as such under Federal or State law, as applicable, an employee, annuitant, or family member covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist or optometrist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. The provisions of this subsection shall not apply to group practice prepayment plans."

SEC. 2. The amendments made by this Act shall become effective with respect to any contract entered into or renewed on or after the date of enactment of this Act.

EXPLANATION OF AMENDMENTS

The Committee adopted the substitute language of H.R. 9440 for the language of S. 2619. The reasons for the Senate Committee's action in this regard were twofold: (1) The Senate Committee agrees for the most part with the House action and would hope that a conference over differences will be unnecessary; (2) The Senate Committee agrees with the House that group practice prepayment plans ought to be exempted because to require group practice prepayment plans to have an exception for optometrists and psychologists would not meet the standards of fairness.

The other action by the Senate Committee on Post Office and Civil Service was to insert the word "clinical" before the word "psychologist" as it appears in three places in the bill.

The Committee understands that certification or licensure of psychologists under state law is not by specialty designation *per se*, no more than are physicians, dentists or lawyers licensed by specialty practice under their applicable state laws.

For the purposes of this Act "licensed clinical psychologists" means those persons licensed or certified under state psychology statutes already in force wherein the basic standard for obtaining full entry into the profession requires a doctoral degree from a recognized graduate psychology program. In addition, one or more years of supervised experience and completion of a psychology examination administered by the appropriate state board issuing credentials is also required. It is further intended that psychologists who hold or receive a certificate or license pursuant to grandfather clauses under laws mandating the above basic requirements shall also be appropriately included and recognized. Any psychologist providing services under the Federal Employees Health Benefits Program shall also meet the applicable national and state professional and ethical standards relevant to independent practice as clinical psychologists providing mental health services.

EFFECTIVE DATE

The bill would become effective on the date of enactment.

COST

In the hearings on S. 2619, the Civil Service Commission and Blue Cross-Blue Shield witnesses asserted that this legislation would lead

to increased use of services provided by psychologists or optometrists and would, therefore, result in increased health insurance premiums. However, the Committee recognizes the difference between an assertion and a fact. The Committee has been furnished no evidence showing that any additional cost to the Government would result from the enactment of this legislation.

Agency Views

Reports were requested from the Comptroller General, the Office of Management and Budget, the Civil Service Commission, the Postal Service and the Department of Health, Education, and Welfare. No reports were received from the Office of Management and Budget and the Department of Health, Education, and Welfare. Reports from the Comptroller General, the Civil Service Commission and the Postal Service follow:

Comptroller General of the United States,
Washington, D.C., November 26, 1973.

Hon. Gale W. McGee,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: With respect to your request of November 1, 1973, for our views on S. 2619, 93d Congress, a bill to provide for access to all duly licensed psychologists and optometrists without prior referral in the Federal employee health benefits program, this is to advise that we have no comment to offer.

Sincerely yours,

Paul G. Dembling
(For the Comptroller General of the United States).

U.S. Civil Service Commission,
Washington, D.C., May 28, 1974.

Hon. Gale W. McGee,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: This is in further reply to your request for the Commission's views on S. 2619, a bill "To provide for access to all duly licensed phychologists and optometrists without prior referral in the Federal employee health benefits program."

S. 2619 would impose a legal requirement that any plan in the Federal Employees Health Benefits Program in which the contract provides benefits for a service which could be provided by psychologists or optometrists, pay or reimburse for such service when provided by those practitioners for a covered individual, without supervision or referral by another health practitioner, i.e., a physician.

Presently, the non-group practice plans provide benefits for extremely few, if any, services generally provided by optometrists.

With respect to services of psychologists, the Government-wide Indemnity Benefit Plan already covers them without referral or supervision by a physician and the Government-wide Service Benefit Plan covers them when they are performed at the direction and under the

supervision of a physician. The Government-wide plans are open for enrollment to any Federal employee or annuitant so that any employee who prefers a plan that covers psychologists' services without referral or supervision by a physician may enroll in the Government-wide Indemnity Benefit Plan.

The Commission believes, as a matter of principle, that all carriers should not be required by law to provide identical coverage or benefits above certain minimum levels. The fact that plans are different help to make them competitive and provides employees with a meaningful choice that enables them to select a plan that most nearly fits their needs. Where there is a significant employee need or demand for a particular benefit which can be provided at reasonable premium cost, carriers usually offer it in order to attract enrollment of interested employees.

We believe that enactment of S. 2619 would operate to increase the premium of the Government-wide plans and, therefore, the contributions of employees and the Government, but there is no way of estimating the amounts of increase.

For the reasons mentioned herein, the Commission believes that enactment of S. 2619 would not be in the best interest of employees or the Government and is opposed to enactment.

We note that on May 1, 1974, we sent your Committee a report similar to this on H.R. 9440, a bill passed by the House of Representatives, which is of substantially the same import as S. 2619.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

By direction of the Commission:

Sincerely yours,

ROBERT E. HAMPTON,
Chairman.

U.S. POSTAL SERVICE,
LAW DEPARTMENT,
Washington, D.C., March 18, 1974.

Hon. GALE W. MCGEE,
Chairman, Committee on Post Office and Civil Service, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of the Postal Service on S. 2619, "To provide for access to all duly licensed psychologists and optometrists without prior referral in the Federal employee health benefits program." It is our opinion that S. 2619 would not be applicable to the Postal Service.

As you know, the Postal Service believes that under 39 U.S.C. § 1005(f), any changes in health benefits affecting postal employees must be made through collective bargaining or, for non-bargaining unit employees, by administrative action of the Postal Service. Under the Postal Reorganization Act Congress intended to generally abandon its determination of the terms and conditions of postal employment and to lodge this responsibility with postal management, subject to collective bargaining. For this reason, and others more fully set out in our report on health benefit bills in the last Congress, H.R. 9620

and H.R. 12202, contained in H.R. Rep. No. 92-841, 92d Cong., 2d Sess. 8-10 (1972), S. 2619 would not be applicable to the Postal Service and to its employees.

Moreover, the Postal Service would oppose any amendment to S. 2619 specifying that it applies to postal employees. The success of the collective bargaining process is essential to the accomplishment of the purposes of the Postal Reorganization Act. Collective bargaining cannot succeed unless the parties understand that they will have to abide by the agreements they reach through the bargaining process. To permit postal employees to gain greater benefits from Congress than those they have accepted through the bargaining process would be as destructive of sound labor relations as it would be to permit the Postal Service to persuade Congress to reduce bargained-for postal wages.

Sincerely,

W. ALLEN SANDERS,
Assistant General Counsel,
Legislative Division.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows (existing law in which no change is proposed is shown in roman; existing law proposed to be omitted is enclosed in black brackets; new matter is shown in italic):

SECTION 8902 OF TITLE 5, UNITED STATES CODE

CHAPTER 89.—HEALTH INSURANCE

* * * * * * *

§ 8902. Contracting authority

(a) The Civil Service Commission may contract with qualified carriers offering plans described by section 8903 of this title, without regard to section 5 of title 41 or other statute requiring competitive bidding. Each contract shall be for a uniform term of at least 1 year, but may be made automatically renewable from term to term in the absence of notice of termination by either party.

(b) To be eligible as a carrier for the plan described by section 8903(2) of this title, a company must be licensed to issue group health insurance in all the States and the District of Columbia.

(c) A contract for a plan described by section 8903(1) or (2) of this title shall require the carrier—

(1) to reinsure with other companies which elect to participate, under an equitable formula based on the total amount of their group health insurance benefit payments in the United States during the latest year for which the information is available to be determined by the carrier and approved by the Commission; or

(2) to allocate its rights and obligations under the contract among its affiliates which elect to participate, under an equitable formula to be determined by the carrier and the affiliates and approved by the Commission.

(d) Each contract under this chapter shall contain a detailed statement of benefits offered and shall include such maximums, limitations, exclusions, and other definitions of benefits as the Commission considers necessary or desirable.

(e) The Commission may prescribe reasonable minimum standards for health benefits plans described by section 8903 of this title and for carriers offering the plans. Approval of a plan may be withdrawn only after notice and opportunity for hearing to the carrier concerned without regard to subchapter II of chapter 5 and chapter 7 of this title. The Commission may terminate the contract of a carrier effective at the end of the contract term, if the Commission finds that at no time during the preceding two contract terms did the carrier have 300 or more employees and annuitants, exclusive of family members, enrolled in the plan.

(f) A contract may not be made or a plan approved which excludes an individual because of race, sex, health status, or, at the time of the first opportunity to enroll, because of age.

(g) A contract may not be made or a plan approved which does not offer to each employee or annuitant whose enrollment in the plan is ended, except by a cancellation of enrollment, a temporary extension of coverage during which he may exercise the option to convert, without evidence of good health, to a nongroup contract providing health benefits. An employee or annuitant who exercises this option shall pay the full periodic charges of the nongroup contract.

(h) The benefits and coverage made available under subsection (g) of this section are noncancelable by the carrier except for fraud, overinsurance, or nonpayment of periodic charges.

(i) Rates charged under health benefits plans described by section 8903 of this title shall reasonably and equitably reflect the cost of the benefits provided. Rates under health benefits plans described by section 8903 (1) and (2) of this title shall be determined on a basis which, in the judgment of the Commission, is consistent with the lowest schedule of basic rates generally charged for new group health benefit plans issued to large employers. The rates determined for the first contract term shall be continued for later contract terms, except that they may be readjusted for any later term, based on past experience and benefit adjustments under the later contract. Any readjustment in rates shall be made in advance of the contract term in which they will apply and on a basis which, in the judgment of the Commission, is consistent with the general practice of carriers which issue group health benefit plans to large employers.

(j) When a contract under this subchapter requires payment or reimbursement for services which may be performed by a clinical psychologist or optometrist, licensed or certified as such under Federal or State law, as applicable, an employee, annuitant, or family member covered by the contract shall be free to select, and shall have direct access to, such a clinical psychologist or optometrist without supervision or referral by another health practitioner and shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. The provisions of this subsection shall not apply to group practice prepayment plans.

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